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09/933,492	08/20/2001	David R. Hembree	00-0625.1	6973

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STEPHEN A GRATTON
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2764 SOUTH BRAUN WAY
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EXAMINER

CHU, CHRIS C

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06/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. HEMBREE and ALAN G. WOOD

Appeal 2008-1102
Application 09/933,492¹
Technology Center 2800

Decided: June 16, 2008

Before SCOTT R. BOALICK, JOHN A. JEFFERY, and MARC S. HOFF,
Administrative Patent Judges.

BOALICK, *Administrative Patent Judge.*

¹ Application filed August 20, 2001. The real party in interest is Micron Technology, Inc.

ORDER REMANDING TO THE EXAMINER

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 52-62 and 70-77, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

This appeal includes a record that is not ripe for review and, pursuant to 37 C.F.R. § 41.50(a)(1), we remand this application to the Examiner to take appropriate action consistent with our comments below. 37 C.F.R. §§ 41.35(b) and 41.50(a)(1).

In the Final Office Action mailed October 10, 2006, the following rejections were listed by the Examiner:

(1) Claims 52, 56, 60 and 70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement;

(2) Claims 52-62 and 70-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and

(3) Claims 52-62 and 70-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanizawa (U.S. Patent No. 4,721,995).

Appellants' Brief responded to all of the rejections in the Final Office Action.

In the Answer, the following rejections were listed by the Examiner:

(1) Claims 52-62 and 70-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and

(2) Claims 52-62 and 70-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanizawa (U.S. Patent No. 4,721,995).

Appellants' Reply Brief responded to all of the rejections in the Answer. In the Reply Brief, Appellants also pointed out that the rejection of claims 52, 56, 60 and 70 under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement, was missing from the Answer. (Reply Br. 3.)

The Answer is completely silent as to the written description rejection of claims 52, 56, 60 and 70 under 35 U.S.C. § 112, first paragraph.

Thus, it is unclear which claims, if any, stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The rejection of claims 52, 56, 60 and 70 under 35 U.S.C. § 112, first paragraph, has not been withdrawn in any office action or in the Examiner's Answer. Clarification is required.

ORDER

Accordingly, it is ORDERED that the application is remanded to the Examiner:

(1) to clearly maintain or withdraw the rejection of claims 52, 56, 60 and 70 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; and

(2) for such further action as may be appropriate.

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This remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies if a supplemental Examiner's Answer is written in response to this remand by the Board.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REMANDED

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